In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-341

RONALD DALE TAGGART, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a non-jury trial in the United States District Court for the Central District of California, petitioner was convicted of wilfully refusing to submit to induction into the armed forces, in violation of 50 U.S.C. App. 462(a). He was sentenced to six-months' imprisonment and two years' probation on the condition, *inter alia,* that he do work of national importance for a period of eighteen months. The court of appeals affirmed *per curiam* (Pet. App. A).

Petitioner registered with his local board in Santa Barbara, California on April 14, 1966 (SSF 1-2). He obtained a student (II-S) deferment which he held until July 12, 1967, when he was reclassified I-A (SSF 10, 14). On October 23, 1967, following a pre-induction physical examination, petitioner was found

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fully acceptable for induction (SSF 10, 16). He was ordered to report on March 12, 1968 (SSF 10, 42), but failed to do so. Four subsequent orders to report on April 3, 1968 (SSF 10, 46) July 2, 1968 (SSF 10, 55), September 10, 1968 (SSF 10, 74), and October 2, 1968 (SSF 10, 83), respectively, were also disobeyed.

Petitioner was again ordered to report for induction on July 1, 1969 (SSF 10, 88). He reported, but was temporarily rejected for one month; he was subsequently ordered to report on August 19, 1969 (SSF 10, 11, 104). On July 2, 1969, the local board first received a request from petitioner for a conscientious objector classification. In his completed SSS Form 150 (Special Form for Conscientious Objector), he stated (SSF 95–96):

> My beliefs have been formed, for the main part, through my family, specifically my parents, grandparents, and my uncle. My Grandfather, now deceased, was deeply involved in the church and was a bible teacher for many years. He taught me that life and love for your fellow man are the most precious and valuable things in the world. We had many discussions about God and his love and how I should try and put God's love to practice in my relations with other people. That to bestow loving and kindness upon people is right and to harm people is a sin.
>
> My uncle and parents have influenced my belifs [sic] very strongly in another way. It was through them putting me in close contact to nature, through camping trips and nature hikes, that I was made more aware of my love and respect for life. I have spent many days with

> them and by myself observing the beauty and magnitude of life. It was through these excursions into nature that I developed a greater insight into my belief that the Supreme being is manifested in all and that all life is sacred.
>
> During the entire length of my life I have never been involved in any physical fight with another person. Even when I was in contact with a large number of people, such as in junior high school and high school, I always avoided getting into circumstances which would involve using physical force against someone. In the few cases in which I was in the position to be in a fight I backed down because I have no desire to do another person harm.

Petitioner's induction was again postponed. On December 8, 1969, the local board notified him that it had decided not to reopen his classification because it had found that there was no change in status resulting from circumstances beyond his control (SSF 11, 88). On December 11, 1969, he was ordered to report for induction on December 29, 1969 (SSF 11, 14). After a further postponement of one week petitioner reported on January 5, 1970; he was found fully qualified, but, when called to step forward, he refused to submit to induction (SSF 11, 127–129). The instant indictment and conviction followed, and the court of appeals affirmed.

In the court below, petitioner unsuccessfully challenged the validity of the last proviso of 32 C.F.R. 1625.2—which precludes local boards from reopening a classification after an induction order has been mailed unless they first specifically find "a change in the registrant's status resulting from circumstances over

which the registrant had no control"—on the ground that it was contrary to congressional policy declared in the conscientious objector exemption provision of the statute (50 U.S.C. App. 456(j)). That same argument had been explicitly rejected by this Court only a few days before the Ninth Circuit's decision in the instant case in *Ehlert* v. *United States*, 402 U.S. 99.

Petitioner now asks this Court to reconsider *Ehlert*. He argues that the assurance of the General Counsel of the Army, on which this Court there relied (402 U.S. at 106)—*i.e.*, that the present practice of the Army is to entertain conscientious objector claims based on beliefs maturing after the mailing of an induction notice but prior to actual induction—cannot serve as a proper basis for the *Ehlert* decision since it might not be followed by the Department of the Army in the future. If that situation should eventually develop, however, this Court has already indicated in *Ehlert* (402 U.S. at 107) that the appropriate time to review a general disregard by the military of the assurances given in *Ehlert* will be when proof of such practice is before the Court in a case in which the issue is properly presented. See our Brief in Opposition in *Farrell and Roy* v. *United States*, No. 71–77, this Term, at p. 6.[1]

[1] We know of no case in which the military has denied a serviceman a conscientious objector claim because his views ripened during the "hiatus period" discussed in *Ehlert*. In all of the authorities cited by petitioner in his supplement to the petition (Supp. Pet., pp. 4–10), the military fully considered the claims and found that the claimants' beliefs, if they did not mature after enlistment or induction, had crystallized—as in the instant case—well before Selective Service mailed the notice of induction. See also *Morrison* v. *Laird*, C.A. 9, No. 26,869, decided July 28, 1971.

This is not such a case. Indeed, here the Army was never presented with petitioner's conscientious objector claim because petitioner refused to submit to induction. Moreover, as pointed out by the court below (Pet. App. A 1), it is plain on the face of petitioner's SSS Form 150 that his objection to war, such as it is, did not ripen only after the mailing of his induction notice, but existed much earlier and was simply not then asserted as a basis for exemption. It has long been recognized that one who sleeps on his fully-matured conscientious objector claim until after receipt of orders to report for induction is not entitled to a reopening of his classification. See, *e.g.*, *United States* v. *Gearey*, 368 F. 2d 144, 149 (C.A. 2); *Davis* v. *United States*, 374 F. 2d 1 (C.A. 5); *Dugdale* v. *United States*, 389 F. 2d 482 (C.A. 9); *United States* v. *Uhl*, 436 F. 2d 773, 774 (C.A. 9), and the cases there cited.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

AUGUST 1971.

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